



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

April 13, 2005

William F. Fenton, Inc.
Attn: Mike Bresnahan
591 Monadnock
Swanzey, NH 03449

Re: Docket No. AF 04-099 – William F. Fenton, Inc.

Dear Mr. Bresnahan:

Enclosed for your records is a copy of the Motion to Accept Settlement Agreement in the above-captioned matter executed by Anthony P. Giunta, P.G., Director of the Waste Management Division, and accepted by Commissioner Michael P. Nolin on April 13, 2005.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

COPY
Michael P. Nolin,
Legal Assistant

cc: Anthony P. Giunta, P.G., Director, Waste Management Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
James Martin, DES Public Information Officer
Tammy Calligandes, DES WMD

William F. Fenton, Inc.
Attn: Mike Bresnahan
591 Monadnock Highway
Swanzey, NH 03446

**ADMINISTRATIVE FINE
No. AF 04-099**

Re: Toyota Volvo of Keene
Route 12
Keene, NH 03434
UST ID# 0-114172

MOTION TO ACCEPT SETTLEMENT AGREEMENT

NOW COME the Department of Environmental Services, Waste Management Division ("the Division") and William F. Fenton, Inc., parties to the above-captioned matter, and stipulate to the following:

1. The Commissioner of the Department of Environmental Services ("DES"), is authorized under RSA 146-C:10-a to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-C and Env-Wm 1401 relating to installation, maintenance, operation, and closure of underground storage facilities. Pursuant to RSA 146-C:10-a, the Commissioner has adopted Env-C 607 to establish the schedule of fines for such violations.
2. William F. Fenton, Inc. ("Fenton") is the registered facility owner of two underground storage tank ("UST") systems at Toyota Volvo of Keene ("the Facility"), further identified as UST # 0-114172, located on real property at Route 12, Keene, NH ("the Property").
3. On December 9, 2004, the Division issued Notice of Proposed Administrative Fine No. AF 04-099 ("the Notice") to Fenton seeking fines totaling \$1,100 for violations of New Hampshire Administrative Rule Part Env-Wm 1401.
4. Specifically, the Notice cited Fenton for violating Env-Wm 1401.11(a) by failing to maintain accurate stock inventory records for both USTs in accordance with RSA 146-C:5 and Env-Wm 1401.11. Pursuant to Env-C 607.05(a), the Division sought a fine of \$1,000.
5. The Notice further cited Fenton for violating Env-Wm 1401.21(l) by failing to display and permanently affix a certificate bearing the Facility's tank information. Pursuant to Env-C 607.02(b), the Division sought a fine of \$100.
6. In order to settle this matter, the Division and Fenton have agreed to the terms of this Settlement Agreement ("Agreement"), as set forth herein.
7. Of the proposed fine, in the amount of \$1,100, 20% or \$220 shall be suspended due to Fenton's history of compliance at this facility. An additional 20% or \$220 shall be suspended due to the Fenton's good faith effort to return this facility to compliance. An additional 20% or \$220 shall be suspended due to Fenton's prompt and consistent cooperation in providing information and correcting the violations.

8. The suspended portion of the proposed fine, in the amount of \$660 is contingent upon Fenton maintaining the subject UST facility in compliance with Env-Wm 1401 for a period of two years from the date of the execution of this document. If Fenton fails to maintain compliance during the two-year period, the suspended portion of the fine, in the amount of \$660 shall become due and payable immediately. If Fenton maintains compliance for the prescribed two-year period, the suspended portion of the fine shall be waived.

9. Fenton agrees to pay the remaining \$440 upon execution of this agreement by Fenton.

10. Payment under Paragraph #9 and any payment that becomes due pursuant to Paragraph #8 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit
Attention: Michael Sclafani, Legal Assistant
P.O. Box 95
Concord, NH 03302-0095

11. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

12. By executing this Agreement, Fenton waives its right to a hearing on or any appeal of the administrative fines identified in the Notice, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.

13. The effective date of this Agreement will be the date on which it is signed by an authorized representative of Fenton, the Director of the Waste Management Division, and the Commissioner of DES. After that date, this Agreement may be amended only by written agreement signed by both parties and the Commissioner. Any such amendment will become effective on the date on which it has been accepted by the Commissioner.

14. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

Respectfully submitted,
William F. Fenton, Inc.

April 4, 2005
Date

COPY
By: [Signature]
Duly Authorized

4/11/05
Date

DES Waste Management Division
COPY
[Signature]
Anthony P. Giunta, P.G., Director

This Motion to Accept Settlement agreement is granted this 13th day of April, 2005.

COPY
[Signature]
Michael P. Nolin, Commissioner
Department of Environmental Services